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Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D C 20554

CGB

SEP 5 2003

Control No. 0302397/aw

The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Office Building
Washington, D C. 20515-1501

RECEIVED

SEP 11 2003

Dear Senator Grassley

Thank you for your letter on behalf of your constituent, Ms. Suki Cell, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Ms. Cell expresses concern that the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. Ms. Cell indicates that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

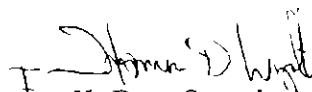
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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Ms. Cell's comments. We have placed a copy of Ms. Cell's correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,


K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

REPLY TO

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e-mail: chuck_grassley@grassley.senate.gov
- ☐ 721 FEDERAL BUILDING
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- ☐ 206 FEDERAL BUILDING
101 1ST STREET SE
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AUG 14 2003

United States Senate
FCC-MAILROOM

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501

August 1, 2003

REPLY TO

- ☐ 103 FEDERAL COURTHOUSE BUILDING
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- ☐ 210 WATERLOO BUILDING
531 COMMERCIAL STREET
WATERLOO, IA 50701-5497
(319) 232-6667
- ☐ 131 WEST 3RD STREET
SUITE 180
DAVENPORT, IA 52801-1419
(563) 322-4331
- ☐ 307 FEDERAL BUILDING
8 SOUTH 6TH STREET
COUNCIL BLUFFS, IA 51501-4204
(712) 322-7103

Ms. Diane Atkinson
Congressional Liaison Specialist
Federal Communications Commission
Office of Legislative & Intergovernmental Affairs
445 12th Street, SW - Room 8-C453
Washington, D.C. 20554

*CEG/aw
TCPA
2392*

Dear Ms. Atkinson:

Enclosed please find a communication from Suki Cell regarding her concerns about FCC regulations governing unsolicited fax advertisements.

I would appreciate any assistance you could provide pertaining to this matter. Please mark your return correspondence to the attention of Andrew Wenthe when responding to my office.

Thank you for your attention to my request.

Sincerely,

Chuck Grassley

Charles E. Grassley
United States Senator

CEG/aw
Enclosure

CHAIRMAN,
FINANCE

14 AUG 2003 RCUD

Committee Assignments

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CHAIRMAN,
INTERNATIONAL NARCOTICS
CONTROL CAUCUS

Subject: FCC Proposal RE Established Business Relationship Language

TO: Members of Iowa's Congressional Delegation

FROM: Suki Cell, Vice President Public Affairs
Cedar Rapids Area Chamber of Commerce

DATE: August 1, 2003

RE: FCC's New Regulations on FAX Communications

The Chamber is extremely concerned about the new FCC proposal that removes "established business relationship" language. This means that the Chamber could be sending unsolicited faxes to our members unless we received a signed statement granting permission. The payment of dues would no longer be sufficient to allow the Chamber to contact members without their explicit consent.

The new rules go into effect on August 25, 2003. They were published in the Federal Register on July 25, 2003 and were discussed in a report on July 23, 2003.

The Chamber uses the FAX to market numerous activities, many of which have a cost to the member. Not only will the proposed rule be burdensome to our organization, it will also be costly.

The fallout from this proposed rule is another example of the "unintended consequences" created when everyone is placed under the same umbrella.

What is the story behind this rule? I look forward to hearing your advice and counsel.

Suki H. Cell
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